14-708

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 297.

THE GERMAN SAVINGS BANK IN THE CITY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

JOSEPH ARCHBOLD, COLLECTOR OF INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 7, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 297.

THE GERMAN SAVINGS BANK IN THE CITY OF NEW YORK, PLAINTIFF IN ERROR,

VS.

JOSEPH ARCHBOLD, COLLECTOR OF INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate	2	1
Summons	3	2
Complaint	5	2
Amended answer	9	3
Statement of case	13	4
Exhibit A (claim for taxes improperly paid)	21	6
Plaintiff's exceptions	28	8
Order entering judgment for defendant	30	8
Judgment	32	9
Opinion of Judge Shipman	34	9
Assignment of errors	46	12
Joinder in error	49	13
Bond	50	13
Citation	52	14

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the German Savings Bank in the city of New York, plaintiffs in error, and Joseph Archbold, collector of internal revenenue, defendant in error, a manifest error hath happened, to the great damage of the said the German Savings Bank in the city of New York, as is said, and as appears by its complaint: We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capital in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 15th day of March, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.
March 14, 1879.

SAML. BLATCHFORD, *C. J.*

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages numbered from three to fifty-three inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of the German Savings Bank in the city of New York, plaintiffs in error, against Joseph Archbold, collector of internal revenue, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this nineteenth day of June, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsed:) U. S. Supreme Court. A 217. The German Savings Bank in the city of New York, plaintiff in error, vs. Joseph Archbold, collector of internal revenue, defendant in error. Writ of error. S. Kaufmann, att'y for pl'ff in error, 39 Nassau street, New York City. U. S. circuit court. Filed Mar. 15, 1879. John I. Davenport, clerk. Filed Ma'h 15, 1879.

3 *Summons for a money demand on contract.*

New York superior court.

THE GERMAN SAVINGS BANK IN THE CITY of New York, plaintiff,
vs.
JOSEPH ARCHBOLD, COLLECTOR, DEFENDANT.

To the defendant above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office No. 39 Nassau street, New York City, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of ten
4 thousand eight hundred and thirty-eight $\frac{52}{100}$ dollars ($10,838.52), with interest from the twenty-ninth day of November, one thousand eight hundred and seventy-six, besides the costs of this action.

Dated N. Y., Feb'uary 28, 1877.

SIGISMUND KAUFMANN,
Plaintiff's Attorney.

5 The superior court of the city of New York.

THE GERMAN SAVINGS BANK IN THE CITY of New York, plaintiff,
vs.
JOSEPH ARCHBOLD, COLLECTOR, DEFENDANT.

The plaintiff, by Sigismund Kaufmann, its attorney, complainant, alleges:

I. That at the times hereinafter mentioned it was and still is a savings bank, duly incorporated pursuant to an act of the legislature of the State of New York, entitled *an* "An act to incorporate the German Savings Bank in the city of New York," passed April 9th, 1859, and the several acts amendatory thereof, having no capital stock and doing no other business than receiving deposits to be loaned or invested
6 for the sole benefit of the parties making such deposits without profit or compensation to it, the said plaintiff.

That at said times and now the defendant was and is collector of internal revenue for the United States of America for the third district of New York.

II. That on the twenty-ninth day of November, 1876, at the city of New York, in the district aforesaid, the defendant had and received for the use and benefit of this plaintiff the sum of ten thousand and eight hundred and thirty-eight $\frac{52}{100}$ dollars, on the promise and agree-

ment to repay the same to plaintiff on demand, which defendant has hitherto refused to do though demanded; wherefore plaintiff brings this suit and prays judgment against the defendant for the sum of ten thousand eight hundred and thirty-eight $\frac{52}{100}$ dollars, with interest thereon from the 29th day of November, 1876, together with the costs of this action.

SIGISMUND KAUFMANN,
Plaintiff's Attorney.

7 CITY & COUNTY OF NEW YORK, *ss:*

Philip Bissinger, being duly sworn, says that he is the president of the German Savings Bank in the city of New York, the plaintiff herein, and has read the foregoing complaint, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true. Deponent further says that the reason this verification is not made by plaintiff is that it is a corporation of which this deponent is president.

PHILIP BISSINGER.

Sworn to before me this 28th day of Feb'y, 1877.
BENNO LEWINSON,
Comm'r of Deeds, City & County of N. Y.

(Endorsed:) N. Y. superior court. The German Savings Bank
8 in the city of N. Y. ag'st Joseph Archbold, collector. Summons & complaint. S. Kaufmann, pl'ff's att'y.

9 U. S. circuit court, southern district of New York.

THE GERMANIA SAVINGS BANK IN THE CITY of New York
vs.
JOSEPH ARCHBOLD.

The defendant above-named, by his attorney Stewart L. Woodford, for his amended answer to the complaint in the above-entitled suit:

1st. Admits the allegations contained in the first paragraph of the complaint.

2nd. Admits that on the 29th day of November, 1876, at the city of New York, the defendant received of the plaintiff the sum of ten thousand and eight hundred and thirty-eight $\frac{52}{100}$ dollars, but denies that he had and received the same for the use and benefit of the plaintiff on
10 the promise and agreement to repay the same to plaintiff on demand, and alleges that the said sum of ten thousand eight hundred and thirty-eight $\frac{52}{100}$ dollars which the defendant received of the plaintiff, was demanded of the plaintiff by the defendant as a collector of internal revenue pursuant to instructions from the Commissioner of Internal Revenue, and the lawful assessments thereof as taxes and penalties which assessments were duly made by the said Commissioner against the plaintiff as taxes of one twenty-fourth of one per centum each month upon the average amount of the deposits of money, subject to payment by check or draft or represented by certificate of deposit or otherwise, payable on demand or at some future day, with said plaintiff as a bank association, company or corporation engaged in the business of
11 banking, and as penalties for making false returns respecting said deposits.

3rd. Admits that he has not repaid the same to the plaintiff.

4th. Denies each and every other allegation contained in the said complaint which is not hereinbefore specifically admitted, denied, or controverted.

Wherefore defendant demands that the complaint be dismissed, and that the defendant have judgment for the costs of this action.

STEWART L. WOODFORD,
U. S. Attorney for Defendant.

CITY AND COUNTY OF NEW YORK, *ss:*

Joseph Archbold being sworn, says that he is the defendant in the above-entitled suit; that he has read the foregoing an-
12 swer and knows the contents thereof; and that the same is true of his own knowledge except as to the matters therein stated to be on information and belief, and that as to those matters he believes it to be true.

JOS. ARCHBOLD,
Collector Int. Rev., 3d Dist. N. Y.

Sworn to before me this 29th day of May, 1877.

CONSTANTIN NITZSCHE,
Notary Public, N. Y. Co. (8.)

(Endorsed:) U. S. circuit court, southern district of New York. The German Savings Bank versus Jos. Archbold, collector. Amended answer. Stewart L. Woodford, U. S. attorney. U. S. circuit court. Filed May 31, 1877. John I. Davenport, clerk.

13 *Statement of case.*

United States circuit court, southern district of New York.

THE GERMAN SAVINGS BANK IN THE CITY of New York, plaintiff,
vs.
JOSEPH ARCHBOLD, COLLECTOR, &C., DEfendant.

The parties hereby agree to try this cause on the following statement of facts, without a jury:

I. That at the times hereinafter mentioned plaintiff was, and still, is a savings bank, duly incorporated pursuant to an act of the legislature of the State of New York, entitled "An act to incorporate the German Savings Bank in the City of New York," passed April 9th, 1859, and the several acts amendatory thereof, having no capital stock, and
14 doing no other business than receiving deposits to be loaned or invested for the sole benefit of the parties making such deposits, without profit or compensation to it, the said plaintiff, or the association or company, and the plaintiff paid each person interest at the rate of four to six per cent. (compounded semi-annually) on the sum or balance of his deposits.

That at said times the defendant was collector of internal revenue of the United States of America for the third district of New York, in which plaintiff did business.

II. That the German Savings Bank (plaintiff) made, the 1st day of June, 1876, a return of its internal-revenue tax for the six months ending May 31st, 1876, which return is admitted to have been in due form

and duly made, except as to the question herein raised, that the
15 said bank deducted from the average of its deposits as exempt, not only the deposits whose amounts did not exceed $2,000 made in the name of any one person, but also $2,000 of the deposits whose amounts exceeded $2,000 made in the name of any one person, and the amount of the tax, according to said return was $253, which was duly assessed and collected by defendant, as such collector, and paid into the Treasury of the United States.

That the said return was so made by said bank under advice of counsel. Whether the return was made in good faith, and without any intent to defraud the government, is to be submitted on such oral and documentary proof as either party may be advised to offer.

III. That on or about the sixth day of July, 1876, in accord-
16 ance with a request of said supervisor, plaintiff made out and delivered to G. N. Birdsall, chief clerk in the supervisor's office at that time, a list or schedule of the deposits in its bank, not exempting or deducting anything from any person's account the sum or balance of whose deposits, including interest which had accrued and become payable thereon, and had been credited to the depositor in his account, amounted to more than $2,000; that upon this list or schedule the said supervisor made out a return, without deductions, but according as the said list was made out, and requested plaintiff to sign and make oath to the same as plaintiff's return, but plaintiff's officers declined so to do, claiming that the return already made, showing a liability of $253 only, is the correct one, and expressing a willingness to contest the matter in the courts, and the said last-named re-
17 turn was duly and correctly made out as to the amounts and tax, according to the construction of the law by the Commissioner of Internal Revenue, and no other proceedings were had thereabout than those stated herein.

That thereupon said return as made out was forwarded to the Commissioner of Internal Revenue for the time being, who made assessment thereon as by law provided: that according to this assessment the tax was $5,489, and upon it the tax and penalties hereinafter mentioned were levied.

IV. That thereafter on the July list, 1876, the said bank was assessed the sum of $10,838.52, made up of the following items, to wit: $5,489, tax claimed by defendant on behalf of the United States on said deposits (not making any exemption as to any person's account, the amount of whose deposits or balance of deposits including in-
18 terest which had accrued and become payable thereon and had been credited to the depositor in his account exceeded $2,000, for the six months ending May 31st, 1876, less the $253 paid as aforesaid balance claimed of $5,236.00. A penalty of 100 % on said balance of $5,236 claimed for the filing of said first alleged false return of $253 on June 1st, 1876, $5,236.00. A penalty of 5 % on said tax for a failure to pay within the time prescribed by law 261.80, and interest at the rate of one per centum per month for two months, amounting to 104.72. and the total amount so assessed was thereafter, against plaintiff's due protest, collected by distraint by defendant, then being said collector and claiming to act as such on the 29th Nov., 1876, which sums were thereafter paid and covered into the Treasury of the United States.

19 V. That thereafter on the 2d day of Dec. 1876, plaintiff duly made claim and appeal to the Commissioner of Internal Revenue for the recovery and refunding of said excessive tax and said penalties claimed by plaintiff to be erroneously and illegally assessed, exacted

and collected as aforesaid, duly setting forth the facts and reasons as appears by the annexed Exhibit A, hereby made a part of this statement, which claim was wholly refused and denied by the Commissioner of Internal Revenue for the United States, and the assessments and collection by defendant affirmed as to said alleged excessive tax and penalties and each of them by the decision of said Commissioner rendered on the 16th day of February, 1877, whereupon plaintiff brings this suit on the 23d day of March, 1877, all within the time limited by statute for the recovery of said excessive tax and penalties collected as aforesaid,
20 together with the interest on the amount thereof.

The parties hereto waive a trial by jury and agree to try this cause before the court on the foregoing statement of facts which is hereby agreed to.

New York, October 14th, 1878.

[E. B. H.]

STEWART L. WOODFORD,
United States Attorney for Defendant.
SIGISMUND KAUFMANN,
Plff's Att'y.

21 EXHIBIT A.

United States circuit court, southern district of New York.

GERMAN SAVINGS BANK, PLAINTIFF,
vs.
JOSEPH ARCHBOLD, COLLECTOR, &C., DEFENDANT.

Claim under series 6, No. 14, for taxes improperly paid.

STATE OF NEW YORK,
City and County of New York, ss:

Philip Bissinger, of the city of New York, and State and county aforesaid, being duly sworn according to law deposes and says that he is the president of the German Savings Bank in the city of New York; that the said institution was engaged in the business of a savings institution; that upon the July list, A. D. 1876, the said bank was
22 assessed by the Commissioner of Internal Revenue an internal-revenue tax of ten thousand eight hundred and thirty-eight $\frac{52}{100}$ dollars, as follows: The sum of five thousand two hundred and thirty-six dollars as a tax on deposits for six months ending May 31st, 1876; the sum of five thousand two hundred and thirty-six dollars as a penalty for filing alleged fraudulent returns of said deposits; the sum of two hundred and sixty-one $\frac{80}{100}$ dollars as a penalty of five per centum on said tax for failure to pay within the time prescribed by law, and the sum of one hundred and four $\frac{72}{100}$ dollars as interest at the rate of one per cent. per month, for two months, which amount the said bank afterwards on the twenty-ninth day of November, A. D. 1876, paid to Joseph Archbold, esq., collector of internal revenue for the said
23 district, under distraint and protest, which assessment and payment of the aforesaid tax was, as this defendant verily believes, erroneous and improper, for the following reasons, viz:

1st. That the tax upon the excess of all deposits over two thousand dollars in the name of any one person for the six months ending May 31st, 1876, has been duly assessed upon the returns made by the German Savings Bank, and paid and covered into the Treasury of the

United States prior to the assessment or payment of the tax and penalties herein referred to.

2nd. That the said assessment of the tax of five thousand two hundred and thirty-six dollars on deposit for six months ending May 31st, 1876, and interest thereon, was a tax assessed exclusively upon
24 the sum of two thousand dollars of such deposits as exceeded that sum made in the name of one person with the German Savings Bank, a savings bank having no capital stock and doing no other business than receiving deposits to be loaned or invested for the sole benefit of the parties making such deposit, without profit or compensation to it, the German Savings Bank (section 3408, U. S. Rev. Statutes), the tax upon the excess of such deposits over said sum of two thousand dollars having been previously assessed and paid.

3rd. That the penalty of one hundred per centum on said tax of $5,236 for an alleged filing of a fraudulent return stands upon no better footing than the tax itself, as set out in the preceeding paragraph, and for the further reason that all of the facts upon which the
25 return of the German Savings Bank was made, were fully disclosed to said collector or his deputy before said penalty was assessed.

4th. That the penalty of five per centum for failure to pay the principal tax, whether the time prescribed by law is erroneous, for the reason that the time to pay said tax has never accrued.

5th. That the tax as levied under the construction given by the collector to section 3408 of the Revised Statutes of the United States is unconstitutional, infringing upon the rule of uniformity prescribed by subdivision I, section 8, article I, of the Constitution of the United States.

6th. The interest at one per centum per month must fail with the tax.

7th. That said assessment of tax and penalties paid the 29th
26 day of November, 1876, were not assessed within the time limited by law, and not until the collector of the third district of New York had assessed the tax first paid, and made his return to the Commissioner of Internal Revenue.

And this deponent now claims that by reason of the aforesaid erroneous assessment and payment of the said sum of ten thousand eight hundred and thirty-eight $\frac{52}{100}$ dollars the German Savings Bank is justly entitled to have the sum of ten thousand eight hundred and thirty-eight $\frac{52}{100}$ dollars refunded, and the said bank now asks and demands the same. And this deponent further makes oath that he has not theretofore presented any claim for the refunding of the above amount or any part thereof.

PHILIP BISSINGER,
Pres'd't.

Sworn and subscribed before me this 2' of December, A. D. 1876.
LOUIS A. WAGNER,
Notary Public, Kings C., N. Y.

27 Upon the question of fact which was submitted to me by the parties, I find that the return was made by the plaintiff without any intent to defraud the government, and in reliance upon the construction of the statute which has been given in good faith to the plaintiff by its counsel, and as conclusion of law, I adjudge that the complaint be dismissed with costs on the merits.

N. SHIPMAN, *Judge.*

(Endorsed:) U. S. circuit court, southern district of New York. The German Savings Bank in the city of New York vs. Joseph Archbold, collector, &c. Agreed statement of facts. S. Kaufman, pl'ff's att'y, 39 Nassau st., N. Y. City. Filed in open court Nov. 12, 1878.

28 Circuit court of the United States for the southern district of New York.

THE GERMAN SAVINGS BANK IN THE CITY of New York, plaintiff,
vs.
JOSEPH ARCHBOLD COLLECTOR, &C., DEfendant.

The plaintiff herein excepts to the conclusion of law dismissing plaintiff's complaint herein, made by Mr. Justice Shipman, for the reason that it is not warranted by the evidence nor by the facts found, and that the learned judge erred in so findings, and that upon the said evidence and facts found the learned judge should have found that the plaintiff's complaint is well founded in law, and that plaintiff
29 recover from defendant the sum of $10,838.52, with interest thereon from the date of payment of said sum and costs.

S. KAUFMAN,
Plaintiff's Attorney.

To STEWART L. WOODFORD, Esq.,
U. S. Att'y for Def't,
and JOHN I. DAVENPORT, Esq.,
Clerk U. S. Circuit Court.

(Endorsed:) U. S. circuit court, southern district of New York. The German Savings' Bank in the City of New York, plaintiff, vs. Joseph Archbold, collecter, &c., defendant. Plaintiff's exception. S. Kaufman, pl'ff's attorney, 39 Nassau st., N. Y. City. To John I Davenport, esq., clerk U. S. circuit court. U. S. circuit court. Filed Jan'y 31, 1879. John I. Davenport, clerk.

30 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York on the fifteenth day of Feb'uary, in the year of our Lord one thousand eight hundred and seventy-nine—

Present: The honorable Nathaniel Shipman, judge.

THE GERMAN SAVINGS BANK IN THE CITY of New York,
vs.
JOSEPH ARCHBOLD.

The above-entitled suit coming on to be heard before the judge of the U. S. circuit court, southern district of New York, on the 12th day of November, 1878, upon an agreed statement of facts, the parties therein, by their respective counsel, having filed a stipulation in writing waiving a trial by jury, and consenting to a trial by the court upon said agreed statement of facts:

And on hearing Lewis Sanders, of counsel on behalf of the plaintiff, and E. B. Hiel, assistant U. S. attorney, of counsel on behalf of the

defendant, the court wishes to be advised, and thereafter, to
31 wit, on or about the 11th day of December, 1878, due deliberation having been had in the premises, the court is of the opinion, and it is accordingly ordered, that the defendant have judgment on the claim by the plaintiffs, and that the clerk of this court tax the costs herein, and enter judgment accordingly.

N. SHIPMAN, *Judge.*

Approved as to form.
New York, 13 Feb'y, 1879.

S. KAUFMAN, *Pl'ff's Att'y.*

We hereby consent to the entry of the above order.

(Endorsed:) U. S. circuit court, southern dist. of New York. German Savings B'k vs. Joseph Archibold. Order entering judgment for defendant. Stewart L. Woodford, U. S. attorney. U. S. circuit court. Filed Feb'y 17, 1879. John I. Davenport, clerk.

32 Therefore, it is considered that the said plaintiff take nothing by its said declaration, but that it be in mercy, &c., and that the said defendant do go thereof without day, &c.

And it is further considered by said court now here that the said defendant do recover against the said plaintiff the sum of twenty-seven $\frac{51}{100}$ dollars for his costs and charges by him about his defence in this behalf laid out and expended by the said court here adjudged to the said defendant and with his assent according to the form of the statute in such cases made and provided, and that the said defendant have execution thereof, &c.

Judgment signed this 26th day of February, 1879.

J. M. DEUEL,
Dep. Clerk.

33 (Endorsed:) U. S. circuit court. German Savings Bank in the city of New York ag'st Joseph Archbold. Judgment record. Stewart L. Woodford, U. S. att'y for def't. Costs, 27.51. U. S. circuit court. Filed Feb'y 20th, 1879. John I. Davenport, clerk.

34 Circuit court of the United States for the southern district of New York.

THE GERMAN SAVINGS BANK, IN THE CITY of New York
v.
JOSEPH ARCHBOLD, COLLECTOR.

SHIPMAN, J.:

This is an action at law which was submitted to the court upon an agreed statement of facts, a trial by jury having been waived by written stipulation of the parties.

Section 3408 of the Revised Statutes of the United States provides in substance that a tax of one twenty-fourth of one per centum shall be levied and paid each month upon the average amount of the deposits of money, subject to payment by check or draft with any bank, and that the deposits in savings banks shall be exempt from tax on so much thereof as have been invested in securities of the United States
35 "and on all deposits not exceeding two thousand dollars made in the name of any one person."

The plaintiff is a savings bank in the city of New York, and having been advised that the sum of two thousand dollars of the deposits of any one person was exempt from tax, made on June 1st, 1876, a return of its internal revenue tax for the six months ending May 31st, 1876, in accordance with said opinion. It deducted from the average of its deposits as exempt not only the deposits which did not exceed two thousand dollars made in the name of any one person, but also two thousand dollars of the deposits in the name of any one person which exceeded that sum. The amount of the tax according to this return was $253, which was paid.

On or about July 6th, 1876, in accordance with a request of the
36 supervisor of internal revenue, the plaintiff made and delivered to said supervisor a schedule of the deposits in said bank, not deducting anything from any person's account the sum of whose deposits amounted to more than two thousand dollars. Upon this list or schedule the supervisor made a return without said deduction, and requested the plaintiff to sign and make oath to the same, which its officers refused to do. No objection is taken that this return was made by a supervisor rather than by a collector or a deputy collector.

Said return, as made out, was forwarded to the Commissioner of Internal Revenue, who made assessment thereon as by law provided.

According to this assessment the tax, less $253, paid as aforesaid was	$5,236
Penalty of 100 per cent. for false return	5,236
Penalty of five per centum for failure to pay tax within the time prescribed by law	261 80
37 Interest	104 72
	$10,838 52

This amount was collected by distraint. Subsequently and within the proper time the plaintiff duly appealed from said assessment to the Commissioner of Internal Revenue; which appeal was denied.

The first question relates to the construction of the clause in the statute which exempts from the tax on deposits in savings banks, "all deposits not exceeding two thousand dollars made in the name of any one person."

The natural construction is that all those deposits made in the name of one person which do not exceed two thousand dollars are exempt.

It is a very different expression from the clause in the statute relating to income taxes (16 U. S. Stat. at Large, 258), in which it is provided that "the sum of two thousand dollars of the gains, profits, and
38 income of any person shall be exempt from said income tax."

The obvious intent of that clause was to deduct for taxable purposes the sum of two thousand dollars from the income of any person, and to do more than exempt from tax all incomes of any one person not exceeding two thousand dollars. The clause under consideration exempts those deposits and those only of any one person which do not exceed two thousand dollars.

This construction has been placed upon similar language by the Supreme Court. The 8th section of the act of July 13th, 1866 (14 Stat. at Large, 137), provided that savings banks should be exempt from tax "on so much of their deposits as they have invested in securities of the United States and on all deposits less than five hundred dollars made in the name of any one person." Mr. Justice Clifford, who
39 gave the opinion of the court, in discussing the subject of taxa-

tion of savings banks under this statute, says: "Savings banks are not exempt from such taxation except in certain cases; nor are they entirely exempted unless they have invested the whole of their deposits in the securities of the United States if any of the deposits made in the name of one person amounted to or exceeded $500. Deposits in sums less than $500 and all such as are invested in the public securities, if the bank falls within the category described in the proviso, are exempt from such taxation." * * * (Oulton v. Savings Institution, 17 Wall., 109.)

The plaintiff claims, in the second place, that it was not liable to the penalty of one hundred per cent.

40 Section 3414 of the Revised Statutes provides that "a true and complete return of the monthly amount of * * deposits * * shall be made and rendered in duplicate on the first day of December and the first day of June by each of such banks, * * with a declaration annexed thereto, under the oath * * of the president or cashier of such bank * * in such form and manner as may be prescribed by the Commissioner of Internal Revenue that the same contains a true and faithful statement of the amounts subject to tax as aforesaid."

Section 3415 provides that "for any refusal or neglect to mak' return and payment, any such bank * * shall pay a penalty of two hundred dollars, besides the additional penalty and forfeiture provided in other cases."

41 Section 3176 provides that "the collector or any deputy collector in every district shall enter into and upon the premises, if it be necessary, of every person therein who has taxable property, and who refuses or neglect to render any return or list required by law, or who renders a false or fraudulent return or list, and makes according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the objects liable to tax, owned or possessed or under the care or management of such person; and the Commissioner of Internal Revenue shall assess the tax thereon, including the amount, if any, due for special tax, and in case of any return of a false or fraudulent list or valuation, he shall add one hundred per centum to such tax."

42 It is not a prerequisite to the addition of the penalty that the return should be wilfully false. If the return is not in fact true, the Commissioner is authorized to affix the penalty. The record shows that the plaintiff was in default, and that the assessor was authorized by the statute to make his return of the objects liable to tax, and that the requirements of the statute were complied with. (Bailey v. Railroad Company, 22 Wall., 604.)

The plaintiff next claims that if those deposits only which do not exceed two thousand dollars are exempt from taxation, the statute is in violation of the clause of the Constitution, which provides that "all duties, imposts, and excises shall be uniform throughout the United States" (article 1, section 8), because the tax is against the depositors, and all depositors are not required to pay the tax.

43 Whatever may be the true theory in regard to the nature of the tax upon dividends and interest upon bonds of railroad and other corporations, which was imposed by the 122d section of the act of June 30th, 1864, (13 Stat. at Large, 284), as amended by the 9th section of the act of July 13th, 1866, (14 id., 138), and which was the subject of discussion in Barnes v. Railroad Co., (17 Wall., 294), and in

Railroad Company v. U. S., (17 Wall., 322), and in Stockdale v. Ins. Co's (20 Wall., 323), it is sufficiently plain that the tax now in question is a tax upon the corporations. (Bank for Savings v. Collector, 3 Wall., 495; Oulton v. Savings Institution, 17 Wall., 109.)

The remaining objection to the validity of the assessment which was stated in the appeal, was not insisted upon.

44 Let judgment be entered for the defendant.

Lewis Sanders, for the plaintiff; E. B. Hill, assistant district attorney, for the defendant.

45 (Indorsed:) Circuit court U. S. south. dist., N. Y. The German Savings Bank, &c., vs. Joseph Archbold, collector. Opinion. Shipman, J. Original filed Dec. 11, 1878.

46 *Assignment of error.*

United States Supreme Court.

THE GERMAN SAVINGS BANK IN THE CITY of New York, plaintiff in error,
vs.
JOSEPH ARCHBOLD, COLLECTOR OF INTERNAL revenue, defendant in error.

Of October term, 1878.

Afterwards, to wit, on the third Monday of October, 1878, in this said term before the judges of the circuit court of the United States for the southern district of New York, in the second circuit, came the said plaintiff in error, by Sigismund Kaufmann, its attorney, and says that on the record and proceedings aforesaid there is manifest error in this, to wit, that the court ordered that the defendant have a verdict and judgment on the claim by plaintiff to recover the sum of ten thousand eight hundred and thirty-eight $\frac{52}{100}$ dollars, currency of the
47 United States, with interest on said sum from the date of payment, said sum having been paid under protest to the defendant on the 29th November, 1876, to relieve a levy and distress upon the property of the plaintiff, made on the 28th November, 1876, by the defendant, under a warrant of distraint issued by defendant as collector of internal revenue, 3d district of New York, for the reason that no part of any of said several sums were due to the United States of America when collected, and no penalties had been incurred; that the sums of deposits not exceeding two thousand dollars made in the name of any one person were by law exempt from tax.

Whereas the court should have ordered a verdict and judgment for plaintiff.

And this the said The German Savings Bank in the city of New York, is ready to verify.

Wherefore plaintiff prays that the judgment aforesaid for the errors may be revoked, annulled, and altogether held for nothing, and
48 that plaintiff may be restored to all things it has lost by occasion of the judgment aforesaid.

SIGISMUND KAUFMANN,
Plaintiff's Attorney.

(Endorsed:) U. S. Supreme Court. The German Savings Bank in the city of New York, plaintiff in error, vs. Joseph Archbold, collector of internal revenue, defendant in error. Assignment of error. S. Kaufmann, att'y for pl'ff in error, 39 Nassau st., N. Y. City. U. S. circuit court. Filed March 15th, 1879. John 1. Davenport, clerk.

49 U. S. circuit court, south. dist. New York.

GERMAN SAVINGS BANK
vs.
JOSEPH ARCHBOLD.

And now comes the said defendant, Joseph Archbold, by Stewart L. Woodford, United States attorney and attorney for the defendant, and says there is no error in the proceedings and record aforesaid in manner and form, as assigned by the plaintiffs in error as aforesaid, &c.

(Endorsed:) U. S. circuit court, south'n dist. New York. German Savings B'k v. Joseph Archbold. Stewart L. Woodward, U. S. att'y. Joinder in error. U. S. circuit court. Filed Ap'l 1, 1879. John L. Davenport, clerk.

50 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York in the second circuit.

THE GERMAN SAVINGS BANK IN THE CITY OF New York, pl'ff in error,
vs.
JOSEPH ARCHBOLD, COLLECTOR OF INTERNAL revenue, def't in error.

Know all men by these presents that we, Philip Bissinger, of No. 13 West 24' st., N. Y. city, and Charles Hanselt, of No. 110 E. 25' st., N. Y. City, are held and firmly bound unto the above-named defendant, Joseph Archbold, in the sum of one hundred dollars, to be paid to the said Joseph Archbold, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals and dated the 14th day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas the above-named plaintiff has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such that is the above-named plaintiff shall prosecute its writ of error to effect and answer all damages and costs, if it shall fail to make its plea good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

PHILIP BISSINGER. [L. S.]
CHARLES HANSELT. [L. S.]

Sealed and delivered, and taken and acknowledged this 14th day of March, 1879, before me—

[L. S.]

EDWARD STOUSE,
Notary Public, N. Y. Co.

51 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Philip Bissinger and Charles Hanselt, being duly sworn, depose and say each for himself as follows, that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

PHILIP BISSINGER.
CHARLES HANSELT.

Sworn to this 14th day of March, A. D. 1870, before me—
EDWARD STOUSE,
Notary Public, N. Y. Co.

The foregoing bond is approved March 14, 1879.
SAM'L BLATCHFORD, *C. J.*

(Indorsed:) Vol , page . U. S. circuit court. The German Savings Bank in the city of New York, plaintiff in error, vs. Joseph Archbold, collector of internal revenue, defendant in error,. Bond for costs on writ of error. S. Kaufman, proctor for pl'ff in error, 39 Nassau st., N. Y. City. U. S. circuit court. Filed Mar. 15, 1879. John I. Davenport, clerk.

52 UNITED STATES OF AMERICA, *ss:*

To Joseph Archbold, collector of internal revenue, defendant in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, eighteen hundred and seventy-nine, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein, the German Savings Bank in the City of New York, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated New York, March 14, 1879.

SAM'L BLATCHFORD, *C. J.*

53 (Indorsed:) A. 217. U. S. Supreme court. The German Savings Bank in the city of New York, plaintiff in error, vs. Joseph Archbold, collector of internal revenue, defendant in error. Citation. S. Kaufmann, proctor for pl'ff in error. U. S. circuit court. Filed Mar. 15, 1879. John I. Davenport, clerk.

Service of a copy of the within admitted.
STEWART L. WOODFORD,
U. S. Att'y.

M'ch 15th, '79. E. B. H.

(Indorsement on cover:) No. 297. The German Savings Bank in the city of New York, plaintiff in error, vs. Joseph Archbold, collector of internal revenue. S. New York, C. C. U. S. Filed 7th October, 1879.

C

SUPREME COURT U.S.
FILED
DEC 22 1893
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

THE GERMAN SAVINGS BANK IN THE CITY OF NEW YORK,

Plaintiff in Error,

vs.

JOSEPH ARCHBOLD, COLLECTOR OF INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

SIGISMUND KAUFMANN,
Plaintiff's Attorney.

WILLIAM M. EVARTS,
LEWIS SANDERS,
GEORGE N. SANDERS,
Of Counsel.

BURGOYNE, Law Case Printer (Law Telephone 587), 29 Rose Street, N. Y.

THE SUPREME COURT OF THE UNITED STATES.

THE GERMAN SAVINGS BANK in the City of New York,
Plaintiff in Error,

AGAINST

JOSEPH ARCHBOLD, Collector of Internal Revenue,
Defendant in Error.

The Court below decided:

1st. That the exemption contained in Section 3408, U. S. Rev. Stats., to savings banks from tax on so much of their deposits "invested in the securities of the United States, and on all de- "posits, not exceeding two thousand dollars, *made in the name* "*of any one person*," was not an exemption of the *amount* of two thousand dollars of the deposits made in the name of any one person, but was a designation and selection for tax of the particular *accounts* with the bank, in which the deposits exceeded two thousand dollars, thereby subjecting the whole of the deposits of such accounts to a tax.

In brief, the Court below decided that *accounts*, whose deposits exceed $2,000, are not exempt on any part of the deposits, *e. g.:*

There is no tax on John Smith's account, in which the deposits do not exceed $2,000, while on Richard Roe's account the deposits amounting to $2,000 01

There is a tax upon the whole amount of the deposits.

Practically, the *one cent* over two thousand dollars incurs a penalty of $\frac{1}{24}$ of 1 per cent. per month on $2,000.01, or for the six months..... $4 98.

Result, John Smith's account remains intact, $2,000, while Richard Roe's account stands thus.... $2,000 01.

Less tax..... 4 98.

$1,995 03

2d. The Commissioner of Internal Revenue and the defendant, the collector, having decided that the law was not a uniform exemption from tax of two thousand dollars of deposits made in the name of any one person, but was a designation of those *accounts,* whose deposits did not exceed $2,000 as exempt from tax, proceeded to impose a penalty of *one hundred per centum* upon the plaintiff for making a "false or fraudulent return," for including as exempt $2,000 of the deposits of each account made in the name of any one person, although such return was made in good faith and according to the obvious construction of the law.

The Court sustained this penalty and decided that for an innocent error in the construction of a statute the law imposes a penalty of *one hundred* per centum as for a *false* or *fraudulent* return, while for a defiant refusal to make any return, thus setting the law at naught, a penalty of only fifty per centum is imposed.

To review the correctness of these conclusions the plaintiff brings this writ of error.

The case was tried by the Court without a jury, by written stipulation filed pursuant to statute.

The facts as agreed upon and as found by the Court are as follows:

Facts as Agreed to.

(*See folios* 13–20.)

I. That at the times hereinafter mentioned, plaintiff was, and still is a savings bank, duly incorporated pursuant to an Act of the Legislature of the State of New York, entitled "An Act to "incorporate the German Savings Bank in the City of New "York," passed April 9th, 1859, and the several acts amendatory thereof, having no capital stock, and doing no other business than receiving deposits to be loaned or invested for the sole benefit of the parties making such deposits, without profit or compensation to it, the said plaintiff, or the association or company, and the plaintiff paid each person interest at the rate of four to six per cent. (compounded semi-annually), on the sum or balance of his deposits.

That at said times the defendant was collector of Internal Revenue of the United States of America for the third district of New York, in which plaintiff did business.

II. That the German Savings Bank (plaintiff), made, the 1st day of June, 1876, a return of its internal revenue tax for the six months ending May 31st, 1876, which return is admitted to have been in due form and duly made, except as to the question herein raised, that the said bank deducted from the average of its deposits as exempt, not only the deposits whose amounts did not exceed $2,000 made in the name of any one person, but also $2,000 of the deposits whose amounts exceeded $2,000 made in the name of any one person, and the amount of the tax, according to said return was $253, which was duly assessed and collected by defendant, as such collector, and paid into the Treasury of the United States.

That the said return was so made by said bank under advice of counsel. Whether the return was made in good faith, and without any intent to defraud the Government, is to be submitted on such oral and documentary proof as either party may be advised to offer.

III. That on or about the 6th day of July, 1876, in accordance with a request of said Supervisor, plaintiff made out and delivered to G. N. Birdsall, Chief Clerk in the Supervisor's Office at that time, a list or schedule of the deposits in its bank, not exempting or deducting anything from any person's account the sum or balance of whose deposits, including interest which had accrued and become payable thereon, and had been credited to the depositor in his account, amounted to more than $2,000; that upon this list or schedule the said Supervisor made out a return, without deductions, but according as the said list was made out, and requested plaintiff to sign and make oath to the same as plaintiff's return, but plaintiff's officers declined so to do, claiming that the return already made, showing a liability of $253 only, is the correct one, and expressing a willingness to contest the matter in the Courts, and the said last-named return was duly and correctly made out as to the amounts and tax, according to the construction of the law by the Commissioner of Internal Revenue, and no other proceedings were had thereabout than those stated herein.

That thereupon said return as made out was forwarded to the Commissioner of Internal Revenue for the time being, who

made assessment thereon as by law provided; that according to this assessment the tax was $5,489, and upon it the tax and penalties hereinafter mentioned, were levied.

IV. That thereafter on the July list, 1876, the said bank was assessed the sum of $10,838.52, made up of the following items, to wit: $5,489, tax claimed by defendant on behalf of the United States on said deposits not making any exemption as to any person's account, the amount of whose deposits or balance of deposits, including interest which had accrued and become payable thereon, and had been credited to the depositor in his account, exceeded $2,000, for the six months ending May 31st, 1876, less the $253 paid as aforesaid balance claimed, of $5,236; a penalty of 100 per cent. on said balance of $5,236 claimed for the filing of said first alleged false return of $253, on June 1st, 1876, $5,236. A penalty of 5 per cent. on said tax for a failure to pay within the time prescribed by law, $261.80, and interest at the rate of one per centum per month for two months, amounting to $104.72, and the total amount so assessed was thereafter, against plaintiff's due protest, collected by distraint by defendant, then being said collector and claiming to act as such on the 29th of November, 1876, which sums were thereafter paid and covered into the Treasury of the United States.

V. That thereafter, on the 2d day of December, 1876, plaintiff duly made claim and appeal to the Commissioner of Internal Revenue for the recovery and refunding of said excessive tax, and said penalties claimed by plaintiff to be erroneously and illegally assessed, exacted and collected as aforesaid, duly setting forth the facts and reasons as appears by the annexed Exhibit A, hereby made a part of this statement, which claim was wholly refused and denied by the Commissioner of Internal Revenue for the United States, and the assessments and collection by defendant affirmed as to said alleged excessive tax and penalties, and each of them by the decision of said Commissioner rendered on the 16th day of February, 1877, whereupon plaintiff brings this suit on the 23d day of March, 1877, all within the time limited by statute for the recovery of said excessive tax and penalties collected as aforesaid, together with the interest on the amount thereof.

Exhibit A is a mere repetition of facts stated above (fols. 21–7).

Facts Found by the Court.

Upon the question of fact which was submitted to me by the parties, I find that the return was made by the plaintiff without any intent to defraud the Government, and in reliance upon the construction of the statute which has been given in good faith to the plaintiff by its counsel, and as conclusion of law, I adjudge that the complaint be dismissed with costs, on the merits.

(Fol. 21.)

N. SHIPMAN,
Judge.

Assignment of Errors.

First.

A. The preceding statement gives all the facts in the case and the following errors are assigned upon the face thereof:

First, the clause of the Statute exempting from tax two thousand dollars of deposits made in the name of any one person is a limitation upon the *amount* of deposits exempted and not a designation of the *accounts* exempted.

The Court below erred in giving the latter interpretation to the Statute.

It strains the language of the Statute from its apparent equality to an unjust and arbitrary exaction from some to contribute to the burdens of government to the total exemption of others. It makes the accidental circumstance of *one cent* more or less determine the question whether or not there shall be a tax upon $2,000.00 or an exemption of that sum. It makes the addition of one cent to the $2,000 in the footing of an account create a tax on the whole account. You have but to raise the limit and apply the principle to all internal revenue taxes to make the millionaire pay all the taxes.

B. Again such an interpretation of the law not only destroys that equality due to each citizen under the law, but is a direct infraction of the rule of uniformity which is not only prescribed by the Constitution, but which is an inherent quality in every tax. A tax cannot be uniform unless the exemptions are also uniform, or else substance will be sacrificed to mere form.

It is clear that a total exemption from tax on deposits

amounting to $2,000, or less, made in the name of any one person, and a total tax upon the whole of $2,000.01, or more, made in the name of any one person, is not a uniform tax, but is a forced contribution made by arbitrary designation of the citizen.

C. The ambiguity in the statute discovered by the Assessor and confirmed by the Court below has been removed by an explanatory Act of Congress passed since the decision below.

Second.

The Court below erred in sustaining a penalty of one hundred per cent. against the bank as for a false or fraudulent return, though made in strict accord with the apparent letter of the law, under advice of counsel and which the Court below finds was made in good faith in reliance upon such advice.

Third.

The Court below erred in ruling that the return made in good faith and acccording to the apparent meaning of the law was "false" within the meaning of the statute giving a penalty of one hundred per cent."

Fourth.

The Court below erred in upholding the addition of a penalty of 5 per cent. and 1 per cent. per month on the amount of the tax. Such penalty only being imposed for the failure to file *monthly* returns or return for which no special time is fixed by law, while the return in question is a *semi-annual return* as prescribed by law.

Lastly.

The Court below erred in rendering judgment for the defendants upon the undisputed facts.

POINTS.

I. *The first return made by the bank was the correct one.* At the time the tax accrued, Sec. 3408, sub-div. 3, paragraph 3 of the R. S., read:

"The deposits in associations or companies known as provi-
"dent institutions, saving banks, savings funds or savings insti-
"tutions, having no capital stock and doing no other business
"than receiving deposits to be loaned or invested for the sole
"benefit of the parties making such deposits, without profit or
"compensation to the association or company, shall be exempt
"from tax on so much of their deposits as they have invested
"in securities of the United States and on all deposits not ex-
"ceeding two thousand dollars made in the name of any one
"person."

Thus the statute read until on the eleventh of December, 1878 (fol. 45), the Circuit Court below held that the exemption clause of the statute was not a uniform rule exempting $2,000 of the *amount* of deposits made in the name of any one person, but a specific designation of the particular *accounts* exempted, to wit: those accounts whose deposits did not exceed two thousand dollars, thus taxing the *whole* amount of deposits of those accounts which exceeded two thousand dollars even by one cent.

The reason of the statute was clearly to encourage and protect savings by exempting them to a certain amount for each person. It would be irreconcilably inconsistent with this object to reverse this encouragement by taxing the exempt $2,000 the very moment a person's account was increased the smallest fraction of a dollar above $2,000, even where the increase is by the saving's own accretion from interest without any additional deposit. The assessor's tax reduces the interest receivable on $2,220 below that receivable on $2,000. This would operate as a practical prohibition on further savings in the majority of cases, as the average yearly savings of the servants, mechanics, clerks and small farmers who use these institutions are less than two hundred dollars *per capita*. The congressional care for "*provident institutions*" sanctions no such improvident methods.

The true distinction between "deposits" and "accounts" is drawn by the Assessor and appears by the *facts agreed upon*. The Assessor required from plaintiff "A list or schedule of the "*deposits in its bank*, not exempting anything from any per-

"son's *account*, the sum or balance of whose *deposits*, includ-
"ing interest which had accrued and became payable thereon,
"and had been credited to the depositor in his *account*, exceeded
"$2,000 (fol. 16).

The effect of the strained and perverted costruction of the statute was an amendment which placed the apt and plain meaning of the statute beyond the reach of a double construction even by an Assessor of Internal Revenue; it is as follows:

"Associations or companies known as provident institutions,
"savings banks, savings funds or savings institutions, doing no
"other business than receiving and loaning or investing savings
"deposits, shall be exempt from tax on so much of such de-
"posits as they have invested in securities of the United States,
"and on two thousand dollars of savings deposits, *and nothing*
"*in excess thereof*, made in the name of and belonging to any
"one person" (Sect. 22, chap. 169).

L. 1879, vol. 20, p. 352., amending Section 3408 of the Revised Statutes.

It is perfectly clear that the exemption clause before and after the foregoing amendment, mean the same thing:

"Savings banks shall be exempt from tax on *all deposits* not
"exceeding two thousand dollars made in the name of any one
"person," or "on *all deposits* made in the
"name of any one person, not exceeding two thousand dollars;"
while the amendment of 1879 reads:

"Shall be exempt from tax on two thousand dollars of savings deposits, *and nothing in excess thereof*, made in the name of and belonging to any one person."

This amendment emphasizes what was plain enough to any but an "official" eye, that the "two thousand dollars of deposits" was the amount of exemption to be applied to every account alike, and not an arbitrary designation of what accounts should be exempt and what accounts should be taxed on the whole sum of its deposits without any deduction.

"Two thousand dollars of savings of deposits and nothing in excess thereof." If the "deposits" meant *the accounts* made in the name of any one person which do not exceed two thousand dollars, the words "and nothing in excess thereof" would then be without any meaning. If it was only those accounts having but two thousand dollars or less which were exempt, of course,

there could be nothing in excess thereof in those accounts, but if, as is obvious and as the Statute says, it is "*all deposits* not exceeding two thousand dollars," then the words "$2,000 of savings deposits, and nothing in excess thereof," are but the equivalent of "all deposits not exceeding $2,000," and show still more clearly that the original exemption applied uniformly to all depositors without distinction.

The amendment of 1879 only supplies words which were implied by every canon of construction applicable to the interpretation of the law before the amendment.

A limitation or exemption is a declaration that beyond the limitation and outside of the exemption, the limitation or exemption does not apply; to say so in so many words, as is done by the amendment in question, adds nothing to the force of the statute though it may tend to stay the hand of the tax gatherer, whose canon of construction is "Nothing is t[illegible] asvs: "stood in a statute except what adds to the tax." ns,

These exceptions and those contained no
tax are in pari materia - igs
They are exemptions without any exce[illegible] de-

II. A SPECIFIC APPLICATION OF THE STATUTE T[illegible] Ates
PERSON," BY NAME, MAKES THE TRUE CONSTRUCTION M[illegible] ing

Thus, suppose John Doe's total deposits are $2,150, then, applying the statute:

"all *John Doe's* deposits not exceeding $2,000 shall be *exempt* "*from tax*"——

cannot mean

"all John Doe's deposits not exceeding $2,000, as well as all "over $2,000, *shall be taxed.*"

for that would tax all his deposits both in excess of and less than two thousand dollars; whereas his deposits are expressly "*exempt*" to the extent of $2,000. It is plainly but the $150, "exceeding or in excess of $2,000," which are taxed.

And so in the former exemption,——

"all John Doe's deposits *less than $500*, shall be *exempt from* " *tax.*"

cannot mean

"all John Doe's deposits less than $500, *shall be taxed.*"

It is very certain that if the Section had read:

"Savings Banks shall be *taxed* on all deposits not exceeding " $2,000, made in the name of any one person"——

it would never be held to mean that only those accounts which did not exceed $2,000 *should be taxed.* The assessor would have clearly seen that it meant to *tax* all accounts uniformly to the extent of $2,000. This shows that it is only the *intent of the assessor*, and not the *intent* of the statute, that produced the assessors construction.

III. UNDER THE DECISION OF THIS COURT THE EXPLANATORY ACT OF 1879 AMENDING § 3408 OF THE R. S. IS CONCLUSIVE EVIDENCE OF THE CORRECT INTERPRETATION.

Sect. 37 of Chap. 315 L. 1872, vol. 17, p. 256, amends § 110 of the Act entitled "An Act to provide internal revenue," &c., approved June 30th, 1864, as amended in 1866 as follows: " And the words '*capital employed*' in said section shall not " include money borrowed or received from day to day in the " usual course of business from any person not a partner of or " interested in the said bank, association or firm, and the exemp- " tion from tax, authorized by said section, of deposits of less " than five hundred dollars, made in the name of one person, in " associations or companies known as provident institutions, is " *hereby extended to deposits so made of not exceeding two* " *thousand dollars.*"

As to that part of the amendment defining "capital employed," made in 1872, this Court held that the taxes collected in the years 1869 and 1870 were, under said explanatory act, recoverable by the parties paying the same from the collector, and said:

" *After controversies had arisen* as to the *interpretation* to be " given to the Statute, upon the question at issue in this case,

"between bankers and the Government, Congress passed the "Act of 1872, defining the meaning of the terms 'capital em- "ployed, in the one hundred and tenth section, and enacted "that they shall not include money borrowed or received from "day to day in the usual course of business from any person "not a partner of or interested in the said bank, association or "firm.' *This enactment was evidently intended to remove any "doubt previously existing as to the meaning of the Statute and "declare its true construction and meaning. Had it been in- "tended to apply only* to cases *subsequently* arising, it would "undoubtedly *have so provided in terms.*"

Bailey vs. Clark, 21 Wal., 288.

The amendment of 1872 was explanatory of the words "capital employed." The amendment of 1879 is explanatory of the words "not exceeding two thousand dollars," and is as follows:

"Associations or companies known as provident institutions, "savings banks, savings funds or savings institutions doing no "other business than receiving and loaning or investing savings "deposits, shall be exempt from tax on so much of such de- "posits as they have invested in securities of the United States "and on *two thousand dollars of savings deposits and nothing "in excess thereof,* made in the name of and belonging to any "one person." Sec. 22, Chap. 169, L. 1879, vol. 20, p. 352, amending Section 3408 of the Revised Statutes.

As has been shown, the words "nothing in excess thereof" can have no meaning except to define and declare the exemption of $2,000 as applicable uniformly to all accounts.

"Nothing in excess thereof" is but a definitive substitute for "not exceeding."

This Act of 1879 had its origin in a controversy with the Government, as to the interpretation to be given to one part of § 110 of the Act of June 30th, 1864; and the Act of 1872 of another part of the same section. All plaintiff asks is that the same effect be given to the one explanatory Act of Congress as to the other. Had it been intended to apply only to cases subsequently arising this amendment would undoubtedly have so provided in terms:

Exemption—"not exceeding $2,000."

Amendment 1879, "$2,000, and nothing in excess thereof."

What is the difference?

The amendment of 1879, does no violence to the statute, it introduces no new term; it is in perfect keeping with the construction maintained by plaintiff, but is wholly irreconcilable with the construction claimed by the assessor. Of deposits which do not exceed $2,000—there can be no excess of that sum, but it is the excess only which *is taxed*, or which is not exempt.

The supposed repugnance of our Constitution, in its distribution of powers, to declaratory Acts of Congress as withdrawing rights under the original legislation from *judicial* interpretation, has no application to tax and forfeiture laws where the Government is dealing only with its own administrative rights and intentions.

The language of the law providing for the $500 exemption (Chap. 184, vol. 14, p. 137), was precisely the same as that in § 3408 of the Revised Statutes, except that the words "less than $500" were replaced by "not exceeding $2,000." The foregoing argument applies equally to both exemptions.

But the assessor says, that the addition of one dollar to the amount of deposits exempted, takes all of those deposits out of the exemption.

The history of the law taxing the banks is, that it has been undergoing continual alteration so far as it affects savings banks. By the first law they were exempt entirely; then exempt to the limit of $500; then this exemption was repealed; then the exemption was reinstated; then the exemption was extended to $2,000.

The statute had been so frequently changed in its phrases as not to have had its meaning settled when the Act of 1872 was passed.

IV. *The Court below erred in the construction given the opinion of this Court.*

The learned Judge below, in support of his opinion as to the proper construction of the term "deposits," cites Oulton vs. Savings Bank (17 Wal., 120). In that case the only question was: Is the defendant a savings bank within the exemption from the tax on banks? Held, that the defendant was not; 1st, because it had a capital stock; and 2d, the association derived profits which it paid in dividends to stockholders.

The following quotation from the opinion of this Court, on

which the Court below relied, wholly fails to give any support to the judgment below:

"Savings banks are not exempt from such taxation, except "in certain cases, nor are any entirely exempted unless they "have invested the whole of their deposits in the securities of "the United States, if any of the deposits made in the name of "one person amounted to or exceeded $500.

"Deposits in sums less than $500 and all such as are invested "in the public securities, if the bank falls within the category "described in the proviso, are exempt from such taxation, but "every savings bank which does not fall within the category "described in the proviso is subject to taxation the same as any "other bank coming within the purview of the Act imposing "the tax."

Here the words "nor are any entirely exempted unless they have invested, &c.—*if any of the deposits made in the name of any one person amounted to or exceeded $500*" are evidently intended to draw the line of the exemption limit in amount, *i. e.*, the amount invested in United States securities and the amount of deposits less than $500. This is not even an intimation that the deposits *exceeding* $500 are to be taxed on that part of them which is *less* than $500.

"Deposits in sums less than $500 and all such as are invested "in the public securities are exempt from taxation." This does not mean and was not intended to decide, because the point was not before the Court, that

Only those *accounts* whose deposits are less than $500 are exempt.

Such opinion would then have been *obiter*.

V. THE SUBJECT EXEMPTED IS ALWAYS TAKEN OUT OF THE SUBJECT TAXED.

"§ 3408. There shall be levied, collected and paid as here-"after provided:

"FIRST. A tax of one twenty-fourth of one per centum per "month upon the average amount of the deposits of money."

Therefore:

The deposits in savings banks shall be exempt from tax on

their *average monthly* deposits not exceeding $2,000 made in the name of any one person.

The exemption must be from the thing taxed.

"The average amount of the deposits" is taxed, and "the average amount of the deposits" made by any one person, not exceeding $2,000, is exempt.

VI. THE LAW IS UNIFORM AND MUST BE SO CONSTRUED. Uniformity in a tax is not only the unwritten law that the burdens of government may be equally distributed, but is imperatively imposed by the written Constitution. Any construction of a Statute which militates against these rules must be rejected, unless the law is incapable of an interpretation consonant with uniformity.

Judge Cooley, in his admirable work upon Constitutional Limitations (4th ed.) says: "and when taxes are levied upon "property there must be an apportionment with reference to a "uniform standard or they degenerate into mere arbitrary ex- "actions. In this particular the State Constitutions have been "very specific, though in providing for *equality* and *uniformity* "they have *done little more than to state in concise language a* "*principle of constitutional law which, whether declared or not,* "would inhere in the power to tax," p. 617 (m. p. 405) * * * "But whatever may be the *basis* of the taxation, the require- "ment that it shall be *uniform* is *universal*. It applies as much "to these local assessments as to any other species of taxes. "The difference is only in the character of the uniformity, and "is the basis on which it is established," p. 622 (m. p. 499).

It is sought to evade this just rule of equality and this patent interpretation of the law in harmony with all other exemptions in our statutes and to engraft a communistic feature upon our taxing system, by arguing that as the tax is collected through the bank, that the depositor is not taxed; to this there are several answers.

1st. According to the interpretation given to the law by the assessor it is the whole of specifically designated accounts made in the name of any one person which are taxed, to the exclusion of all others. It is the particular individual who is taxed.

2d. The plaintiff (and all other savings banks within the ex-

emption) " has no capital stock and does no other business than " receiving deposits to be loaned or invested for the *sole benefit* " of the *parties making such deposits without profit* or *compen-* " *sation to it*," the plaintiff.

Under the language of the statute and within the terms of the agreed statement of facts, the plaintiff, the bank, has not the remotest interest in the accounts taxed. The whole business of the bank is receiving deposits and making loans thereof "for the sole *benefit of the parties making such deposits.*"

Whatever might be said as to stock corporations, doing business for a profit, where the tax has to come out of the stockholders in reduction of their profits, has no application to the plaintiff, where the tax must be paid by the designated depositors, the plaintiff being the mere conduit through which the tax is collected, but having no interest either in the thing taxed or the tax.

3rd. The suggestion of the learned Court below, that this is a tax on the *corporation*, if it has any pertinence must intimate that the tax being paid by the corporation as a whole can be exacted by it *pro rata* upon all its accounts—those below as well as those above $2,000. This result, as legitimate from the Government's interpretation of the statute, is a *reductio absurdum* of such interpretation. This would be robbing the small depositors to relieve the large ones.

VII. *The Penalties:*

The penalties assessed were 100 per cent., as for a false or fraudulent return	$5,236.00
5 per cent. for an alleged failure to pay within the proper time	261.80
1 per cent. a month until payment	104.72
And a special penalty under § 3415 R. S. of	200.00

The Court sustains the penalty of 100 per cent. for the alleged false or fraudulent return on the following finding of fact (fol. 27):

" Upon the question of fact which was submitted to me by " the parties, I find that the return was made by the plaintiff " *without any intent to defraud* the *government*, and in reliance " upon the construction of the statute which has *been given in*

"*good faith* to the plaintiff by his counsel, and as conclusion of "law I adjudge that the complaint be dismissed with costs."

The question is narrowed down to this:

"Can a return be false or fraudulent when it is made with- "out intent to defraud and in conformity with a construction "of the statute which has been given in good faith by the coun- "sel of the party making the return?"

In other words, can the decision of an open contest in good faith as to the construction of a statute, determine not only that the return is upon an erroneous interpretation of the law, but also carry the consequence as if it had been false in fact, or fraudulent in purpose, notwithstanding the finding of the Court, on these matters of fact, to the contrary. If this extravagance can be supposed, it must involve the result that the taxpayer can never raise any question as to the legality of the assessments made upon him by the assessor, arising upon a construction of law as to the return to be made without incurring a penalty of 100 per cent. for making a presentation of the point for judicial determination.

While the statute imposes a penalty of only 50 per cent. upon him who refuses to make any return, and imposes no penalty at all upon him who, refusing to make any return, is willing to furnish the data for making a return and to verify it, the plaintiff here has been mulcted in 100 per cent. penalty, though actually furnishing the return which was accepted by the Commissioner of Internal Revenue, solely because its officers would not swear to a *conclusion of law* as to the amount of the taxable deposits, contrary to the advice of their counsel, and their own conscientious convictions as to the true construction of the law, a sworn return in accordance with that construction having already been made and the tax assessed and paid.

"Penalties are never extended by implication. They must "be expressly imposed or they cannot be enforced."

Elliott *vs.* Railroad Co., 99 U. S., 576.

VIII. The Return was not false.

According to the advised construction of the statute, the first return found by the Court to have been made in good faith, could not be *false* within the meaning of the statute.

An error in the interpretation of a law does not become "*false*" in the sense of the statute; if it did, a similar error *increasing* the amount of the tax would as justly incur a penalty as the return here made.

FALSE, adjective—Latin, *falsus*; *fallo*, to deceive.

"Destitute of truth or reality; not honest, treacherous; per-
"fidious; deceitful; mendacious; counterfeit; spurious.

Syn. Spurious. Compounds and derivations: false-conception; false-faced; false-hearted; false-hood; falseism; false-keel; falseness.

FALSE *v. a.* to falsify; to deceive; to cheat; to delude.

FRAUD, deceit; cheat; guile; trick; stratagem.

Synonyms. Artifice; cheat.

FRAUDULENT, full of fraud; trickish; subtle; deceitful." WORCESTER'S DICT.:

FALSE, a. [falser, falsest] from *falsus*, to deceive.

1. Uttering falsehood; unveracious; given to deceit; dishonest.

2. Not faithful to obligations, &c.; treacherous; perfidious.

3. Not according with truth or reality; not true; deceitful, inconstant, &c., as a false statement.

4. Not genuine or real; assumed or designed to deceive; counterfeit.

5. Not well founded; not firm or trustworthy; erroneous, as a false claim; a false conclusion; false imprisonment; false return; false token.

FRAUD.

1. Deception deliberately practiced with a view to gaining an unlawful or unfair advantage; artifice by which the right of another is injured; injurious strategem; deceit; trick.

Syn.—Deception; deceit; guile; subtlety; craft.

--Webster's Dictionary.

"I may remark that the word 'false' as used in the 14th
"Section of the Act, has a somewhat technical signification. It
"is always accompanied by the other word, 'fraudulent,' with
"which, perhaps, it may be regarded, as used in this Statute, as
"almost if not quite synonymous. It is not every return which
"fails to disclose all the taxable articles proper to be returned,
"that can be denominated as a 'false' return within the meaning

"of this law. But every return which was made with the "*intent to evade* a proper valuation, enumeration or assessment "is properly denominable as 'false.' There must, I think, be "some evidence of *willful* or *fraudulent* mistake, omission or "neglect in order to bring a deficient return within the penal "provision of the Statute."

11th Opinions of the Attorney General, pp. 282-3, upon the construction of § 14, Act of June 30th, 1864 (13 Stats, 227), being the same section under which the penalty was imposed in the case at bar.

The words "false" and "fraudulent" are not of contrast or antithesis. They are shades or complements of guilty meaning, and fall within Lord Bacon's maxim, that "the coupling of "words together shows that they are to be understood in the "same sense."

Broom Legal Maxims (M. P. 565.)

It is preposterous to say that in the English language either of these words can be applied to an action in good faith and innocent. Least of all, can such significance be attached to a statute which prohibits conduct thus described and visits it with heavy penalties.

If a statute means to punish error in good faith and without evil intent, the law giver should say so: the judicial tribunals will not strain construction for such iniquitous results.

IX. *When may a penalty of one hundred per centum be imposed?*

Assuming for the sake of argument that the first return by plaintiff was erroneous, and that an erroneous return is a "false" return within the meaning of the statute, was the Commissioner of Internal Revenue in a position to impose a penalty of one hundred per cent. or had the bank incurred such penalty?

The facts agreed upon, fols. 16, 17, p. 5, show: "That on or "about the 6th day of July, 1876, in accordance with a request "of said Supervisor, plaintiff made out and delivered to G. N. "Birdsall, Chief Clerk in the Supervisors' office at that time, a "list or schedule of the deposits in its bank, not exempting or "deducting anything from any person's account, the sum or

"balance of whose deposits, including interest which had ac-
"crued and become payable thereon, and had been credited to
"the depositor in his account, amounted to more than $2,000,
"that upon this list or schedule the said Supervisor made out a re-
"turn without deductions, but according as the said list made
"out, and requested plaintiff to sign and make oath to the same
"as plaintiff's return, but plaintiff's officers declined to do so,
"claiming that the return already made, showing a liability of
"$253 only, is the correct one, and expressing a willingness to
"contest the matter in the Courts, and the said last-named re-
"turn was duly and correctly made out as to the amounts and
"tax according to the construction of the law by the Commis-
"sioner of Internal Revenue *and no other proceedings were had*
"*thereabout than those stated herein.*"

The return so made was accepted by the Commissioner and the tax and penalties assessed thereon. § 3173 provides that where a person liable to pay a tax neglects to make a return but consents to disclose the particulars, the deputy collector may make out such return, which, upon being verified, may be received as the return of such person.

Here it is found that the second return was "duly and cor-
"rectly made out according to the construction of the law by
"the Commissioner of Internal Revenue."

This return being "duly and correctly" made out and accepted without verification, the question arises, did the bank incur any penalty, and if so, what?

By § 3173 a return not required to be made on or before the first Monday in March in each year is in time if made before the day of levy.

This the bank did. If, then, the deputy collector could both accept the second return "duly made" and hold the first return to be false, was a penalty then incurred? Upon suspicion of a false return the collector may summon such person and examine him (§ 3173)

The summons *shall* be served by the *deputy collector* (§ 3174).

When such person shall disobey the summons, the collector may apply for an attachment (§ 3175).

The collector shall enter upon the premises, if necessary, of every person who refuses or neglects to render any return or list required by law, or who renders a false or fraudulent return and make, according to the best information which he can ob-

tain, "*including that derived from the evidence elicited by the* "*examination* of the collector, and on his own view and infor- "mation, such list or return, according to the form prescribed, " * * * and in case of any return of a false or "fraudulent list or valuation, he shall add one hundred per cen- "tum to such tax; and in case of refusal or neglect, except in "cases of sickness or absence, to make a list or return, or to "verify the same as aforesaid, he shall add fifty per centum to such tax."

The second return having been "duly and correctly made" and accepted without other steps, was any other penalty incurred?

It would seem to be the purpose of the law that before any penalty was incurred that the *collector* or his *deputy* should be obliged to make out the return himself, either from the facts disclosed by the party or from his compulsory examination and such other facts as he can ascertain by inspection or otherwise. Where the return is made out in proper form duly and correctly by the party to be taxed, which return is accepted without verification, no penalty would seem to be incurred. It is only where a party neglects or refuses to make return but is willing to disclose the facts upon which the collector may make out a return, that a refusal to verify a return so made out incurs a penalty of fifty per centum. There is no other penalty.

X. *The 5 per cent. penalty and 1 per cent. a month interest were erroneously imposed.*

"§ 3185. All returns required to be made *monthly* by any "person * * * All returns for which *no provision is other-* "*wise* made, shall be made on or before the tenth day of the "month succeeding the time when the tax is due" * * * *

"When the tax is not paid on or before the last day of the "month, as aforesaid, the collector shall add a penalty of 5 %, "*together* with interest at the rate of 1 % a month."

"§ 3409. The taxes provided in the preceding section shall "be paid *semi-annually*, on the first day of January and July."

This tax then is neither a *monthly* tax *nor one not otherwise provided for*, but is provided for as a *semi annual* tax; hence there is no penalty of 5 % and 1 % imposed for the nonpayment of such.

XI. *The opinion below*:

The Court below has cited several cases, but the question at bar did not arise in them.

In Bailey vs. Railroad Company, 22 Wal., 604, no penalty was in question; it had been remitted by the Commissioner of Internal Revenue together with nine-sixteenths of the tax, and the suit was brought to recover the seven-sixteenths, alleging some irregularities in the assessment of the tax. The Commissioner there had conceded that no penalty had been incurred and plaintiff claims here to be equally as exempt.

In the Bank for Savings vs. Collector, 3 Wal., 507, the only questions decided were: 1. That a savings bank does a banking business within the meaning of the Internal Revenue Law. 2d. That "*invested*" deposits are deposits subject to tax. 3d. That deposits received and invested the same month are taxable as of that month.

Oulton vs. Savings Bank, is quoted, *supra*, Point

XII. The judgment should be reversed, with directions to enter judgment for the plaintiff for the amount demanded.

WILLIAM M. EVARTS,
LEWIS SANDERS,
GEORGE N. SANDERS,
Of Counsel for Plaintiff in Error.

OFFICE SUPREME COURT U. S.
FILED
JAN 16 1882
JAMES H. McKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1881.

THE GERMAN SAVINGS BANK
vs.
ARCHBOLD, COLLECTOR. } No. 297.

BRIEF FOR THE COLLECTOR.

The facts are sufficiently stated in the brief of the learned counsel for the bank.

The history of the statutory provision under which the tax in question was exacted is as follows:

A like tax was first imposed by the act of 1864, ch. 137 (13 Stat., 277), with a proviso to the effect that it should not apply to savings banks of the class to which the present plaintiff belongs.

That proviso, however, was stricken out by the act of 1865, ch. 78 (13 Stat., 479).

Then followed the act of 1866, ch. 184, sec. 9 (14 Stat., 137), which contained a clause that has been reproduced in the second paragraph below, taken from section 3408 of the Revised Statutes; the whole of section 3408, so far as here applicable, being as follows:

There shall be levied, collected, and paid, as hereafter provided:
First. A tax of one twenty-fourth of one per centum each month

upon the average amount of the deposits of money, subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, with any person, bank, association, company, or corporation, engaged in the business of banking.

Second. [Tax on *capital* omitted.]

Third. [Tax on *circulation* omitted.]

The deposits in associations or companies known as provident associations, savings banks, savings funds, or savings institutions, having no capital stock, and doing no other business than receiving deposits to be loaned or invested for the sole benefit of the parties making such deposits, without profit or compensation to the association or company, shall be exempt from tax on so much of their deposits as they have invested in securities of the United States, and on all deposits not exceeding two thousand dollars made in the name of any one person.

The section just quoted is that now relied upon as warranting the tax in question.

Subsequently thereto, however, was passed the act of 1879, ch. 169, the 22d section of which (20 Stat., p. 352) provides:

That section 3408 of the Revised Statutes be amended by striking out all after the thirtieth line, and inserting the following: Associations or companies known as provident institutions, savings banks, savings funds, or saving institutions, doing no other businessthan receiving and loaning or investing savings deposits, shall be exempt from tax on so much of such deposits as they have invested in securities of the United States, and on two thousand dollars of savings deposits and nothing in excess thereof, made in the name of any belonging to any one person.

I submit that a perusal of this legislation makes it plain that, commencing in 1864 with a policy that savings banks should be *entirely excepted* from the general tax upon bank deposits, Congress has changed its ground thrice, viz, *in* 1865, by subjecting them in all respects to the general tax; *in* 1866, by excepting from the latter lia-

bility such deposits as did not exceed $2,000, leaving deposits of greater magnitude, liable in all respects to the general tax; *and in* 1879, by excepting from liability the sum of $2,000 in every deposit.

It is urged by the learned counsel for the bank that the act of 1879 is *declatory* of the meaning of section 3408.

It seems to me to be plainly *remedial*. I find no more reason for saying that it was intended as a declaration of what Congress intended by section 3408, than that section 3408 (the act of 1869) in turn is *declaratory* as to the act of 1865; or this last *declaratory* as to the original act of 1864.

Upon its face it seems intended to remedy a state of things *that had existed* under section 3408; or, in other words, to imply that the present contention by the collector is well founded.

The decision in Bailey *vs.* Clark (21 Wall., 228), cited on behalf of the bank, is not pertinent here, because the act of 1872 therein construed purports upon its face to *interpret* the previous act of 1864. *Here* the later act purports to provide a *substitute* for the former.

The above-quoted act of 1879 is not the only illustration that Congress, by the act of 1866 (in sec. 3408), *intended* the meaning which the collector has asserted, and that it well knew how to express a different meaning when intended; ~~but~~ the act of 1864 (first above mentioned), in regard to "incomes," after exempting such as did not exceed $600, expressly laid its tax upon "the excess over $600" in all ~~items~~ (sec. 117, 13 Stat., 281); so in case of "salaries" (*ibid.*, sec. 123),

And in case of "legacies" to minor children, when those of $1,000 and under had been exempted a proviso was appended, ~~but~~ That in case of larger legacies "*the excess only above that sum should be liable to such taxation*" (Stat., 1866, sec. 9, 14 Stat., 140).

The fact seems to be that Congress went first upon a presumption that in savings institutions the depositors were in general *the poor*, who could ill afford to be taxed upon their little savings. A year later this theory was *totally* abandoned. After another year it was *partially restored*, a certain reasonable sum being accepted as defining the poor among the depositors. This theory remained in existence for thirteen years, when it was thought better to place the tax upon the footing once assigned to *income* and *legacies*, and so to exempt a certain amount in every deposit.

2. Whether under the circumstances detailed in the record the *return* made by the bank was *false* within the meaning of a provision which imposes like penalty upon "false or fraudulent" returns, is submitted without argument.

S. F. PHILLIPS,
Solicitor-General.